

In the Matter of ATLAS POWDER COMPANY and DISTRICT No. 50,  
UNITED MINE WORKERS OF AMERICA, LOCAL No. 12083, C. I. O.

*Case No. C-867.—Decided October 5, 1939*

*Industrial Finishes, Artificial Leather, and Rubberized Cloth Manufacturing Industry—Interference, Restraint, and Coercion:* derogatory comments of the supervisory force and interference by them with public meetings of the Union; increased production in and closer supervision over one department to discourage union activities of employees in that department; celebration conducted on company time and premises following Union's defeat in consent election to determine collective bargaining agency, encouraged and participated in by management and supervisors; threats of discharge of union employees by supervisory force because of union activities; anti-union statements and conduct of supervisory force—*Discrimination:* discharge of one and lay-off of another employee; charges of dismissed, not supported by the evidence.

*Mr. G. T. O'Hanlon*, for the Board.

*Cummings & Lockwood*, by *Mr. William A. Kelly* and *Mr. F. K. Norman*, of Stamford, Conn., for the respondent.

*Mr. Herman Edelsberg*, of New York City, *Mr. Samuel Gruber*, of Stamford, Conn., and *Mr. James Nelson*, of Washington, D. C., for the Union.

*Mr. Ralph S. Rice*, of counsel to the Board.

## DECISION

AND

## ORDER

### STATEMENT OF THE CASE

Upon charges and amended charges duly filed by United Mine Workers of America, District 50,<sup>1</sup> herein called the Union, the National Labor Relations Board, herein called the Board, by Elinore M. Herrick, the Regional Director for the Second Region (New York City) on April 29, 1938, issued and duly served its complaint against Atlas Powder Company, Stamford, Connecticut, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act.

<sup>1</sup> From the record, it appears that the local organization here involved is District No. 50, United Mine Workers of America, Local No. 12083, C. I. O.

The complaint, in substance, alleged that the respondent had (1) discriminated with regard to the hire and tenure of employment of John Martinech because of his membership and activities in the Union; (2) persuaded and warned its employees to refrain from becoming or remaining members of the Union; (3) threatened its employees with discharge and other reprisals if they became or remained members of the Union; (4) kept under surveillance the meetings and meeting places of the union members employed by the respondent; and (5) by these and other acts, interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

Upon supplemental charges duly filed by the Union on May 10, 1938, the Board, on June 18, 1938, by the Regional Director, issued and duly served an amendment to the complaint, alleging in substance that the respondent had discriminated with regard to the hire and tenure of employment of Klym Markevich.<sup>2</sup>

The respondent filed an answer and, at the hearing, a supplemental answer. The answer, as supplemented, admitted certain of the allegations relating to the respondent's business but denied that it had engaged in any unfair labor practices. In addition, the respondent affirmatively alleged that it had discharged Martinech because of his repeated acts of gross negligence and wilful and deliberate failure to properly perform his duties, and had laid off Markevich along with others in the plant because of lack of work.

Pursuant to notice duly served upon the parties, a hearing was held at Stamford, Connecticut, on June 23, 24, 27, 28, 29, and 30, 1938, before Mapes Davidson, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties. During the hearing, the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On August 26, 1938, the Trial Examiner filed his Intermediate Report in which he found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act. He recommended that Markevich and Martinech be reinstated to their former positions with back pay and that the respondent cease and desist from interfering with, restraining, or

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<sup>2</sup> In the testimony, reference was made to Markevich as "Klem" Markevich.

coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and from discouraging membership in the Union or any other labor organization.

On September 26, 1938, the respondent filed exceptions to the Intermediate Report and, in addition, requested findings of fact. Pursuant to request therefor by the respondent and notice to all parties, a hearing was had before the Board in Washington, D. C., on May 19, 1939, for the purpose of oral argument. Counsel for the respondent and a representative of the Union appeared and participated therein. Counsel for the respondent filed a brief. The Board has considered the exceptions to the Intermediate Report and the requested findings of fact, and except as they are consistent with the findings, conclusions, and order set forth below, finds no merit in them.

Upon the entire record in the case, the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

Atlas Powder Company, the respondent, is a corporation organized under the laws of the State of Delaware, having its principal office and place of business in Wilmington, Delaware. At Stamford, Connecticut, it operates a plant known as the Zapon Division, the employees of which are those who are here involved.

The Zapon Division is engaged in the manufacture, production, sale, and distribution of artificial leather, rubberized cloth, and chemical industrial finishes. The raw materials used in the manufacture of these products are cloth, pigments, solvents, nitro-cellulose, resins, and chemicals.

In 1937 the value of the raw materials used by the respondent in its operations at the Zapon Division was approximately \$2,000,000. Ninety per cent of such materials were obtained by the Zapon Division outside the State of Connecticut. In the same year, the value of the finished products manufactured at the Zapon Division, and distributed and sold by the respondent, was approximately \$3,000,000. Approximately 85 per cent of these products were sold and shipped by the respondent to customers outside the State of Connecticut.

#### II. THE ORGANIZATION INVOLVED

District No. 50, United Mine Workers of America, Local No. 12083, C. I. O., is a labor organization admitting to its membership employees of the respondent.

## III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

During the year 1936, the respondent instituted a plan to increase production, referred to by the employees as a "speed up" system, in various departments of the Zapon Division, and by August 1937, it had installed the system throughout the plant, excepting the lacquer department where the respondent sought to install the system during that month. The employees of the lacquer department objected to the system and on August 23, 1937, 47 employees, including most of those employed in that department, protested against it by going on strike.

The strikers requested assistance from Fred Ruscoe, an organizer for the Union, who thereupon organized them and directed strike activities during the 3 days that the strike was in progress. At the end of that time, it appeared that the strike was unsuccessful and it was discontinued. By agreement between the respondent and a committee of the respondent's striking employees the strikers returned to work on August 26, 1937.

During the ensuing 3 months, the Union held frequent organizational meetings at the entrance to the plant during the employees' lunch hour and after working hours.<sup>3</sup> These meetings were attended by employees, including foremen and other members of the supervisory force who heckled the union speakers and went through the audience talking to listeners. This was done for the obvious purpose of interfering with the meetings and was continued during all the time that the shop-gate meetings were held, notwithstanding the protests of the union organizers which were broadcast over the loud-speaker system. To each shop-gate meeting, the respondent sent a stenographer who openly took shorthand notes of the speeches made and later transcribed them and submitted them to the manager of the Zapon Division.

During shop-gate meetings held after working hours, some employees from the rubber department and elsewhere assembled there at a place from which they were able to hear the union speaker through an open window. For a year prior to the start of the shop-gate meetings, this window had been opened by employees at will to provide needed ventilation. In September 1937, during the period that the shop-gate meetings were in progress, the window was closed by a watchman, although the employees in the department protested the resultant heat and lack of ventilation. In closing

<sup>3</sup> Referred to herein and in the record as the shop-gate meetings. At these meetings, the union organizers addressed the employees by means of a loudspeaker which was off the respondent's property. The employees, however, were on the respondent's premises.

the window, the watchman said that he was acting for the "office." One of the employees, however, reopened the window and was subsequently told by the watchman, "You know now, in office, everything all right" and thereafter the window was allowed to remain open.

Immediately following the strike the employees of the lacquer department, the focal point of union organizational activities in the plant, were subjected to much closer supervision than they had been before the strike, and the volume of work assigned to them was increased. They were also warned by the assistant superintendent, Francis Paight, concerning the quality of their work. Joseph Evanusich testified with reference to conditions in the lacquer department after the strike:

Of course, it was bad. We have to rush everywhere, and we scared, he [Paight] have 8 men on the list he going to get rid of, and from that day he was watching every hour. You see bosses walking around the plant, and they want to see what the worker does, and before that I see them maybe once a day passing through, and everything all right . . . That rough part of the way they was acting last until election time.

During the following weeks the organizational activities of the Union spread to other parts of the plant. Joseph Doran, Jr., an employee in the coating room, testified that his supervisor, one McHugh, told him, "I am surprised at you—I hear you are organizing for the C. I. O." "Don't let me catch you." Doran further testified that thereafter his supervisor kept closer watch over him than formerly; that the respondent arranged his work so that his opportunities to earn a bonus were more limited than those of other employees; that he was subsequently laid off; and that later the management rehired another employee in his department with less seniority and transferred other men into the department from other departments. Doran's testimony is uncontradicted.

In October 1937, the Union claimed to have a membership of 182 employees, a majority of those employed in the plant at that time, and offered, in order to secure sole collective bargaining rights in the plant, to submit to the respondent its membership cards to be checked against the respondent's pay-roll records. The respondent refused to make such a check but agreed to abide by the results of an election. A consent election was accordingly held on December 8, 1937, under the auspices of the Regional Director. The Union was not designated as bargaining agent by a majority of the employees who voted, obtaining but 96 votes out of 292.

As soon as the counting of the ballots was completed, a "crowd" of employees, including some foremen led by Foreman Felix Di Prisco, bearing signs and banners praising the management and

deprecating the Union, paraded into the room where the election had been held, through the plant, and through the town of Stamford. The signs and banners carried by the employees were made of the respondent's property. Cans belonging to the respondent were used as noise makers in the parade through town, although it was against the rules of the respondent to remove the cans from the plant premises. The parade returned to the plant and, at its conclusion, a celebration was held on the plant premises, which was participated in by employees of all departments of the plant except those in the lacquer and press rooms who continued working. Work in the other departments was apparently abandoned.

The celebration continued through the afternoon and evening. The participants hanged and burned effigies of union officers. Felix Di Prisco passed out intoxicating liquor to the men. During the celebration the employees listened to speeches and various forms of entertainment including a drum solo given by one employee at the request of his supervisor. At the close of the day, the respondent's supervisors and office and production workers held a dance at the office, during which some property damage to the respondent's building occurred. There had never been a dance held for the plant employees on the plant premises prior to this time.

When the celebration was beginning, Paight went through the lacquer department, over which he was assistant superintendent, and announced that "anyone that voted right could go over and have a good time."

Creighton, the general manager, testified that during the celebration the celebrators "gathered in a group . . . and they were getting various men there to make speeches. I suppose anybody that came around that was a supervisor, or anybody particularly liked in the office, or any thing." He further testified that he made a speech to the employees in which he said in substance that "We were all glad it was over and the thing to do now was to come back and go to work and forget all about the election and everything that happened previous to the election" and "I said that apparently it appeared as if they liked the way it came out and I may have told them I was glad they liked it."

It does not appear that anyone gave permission for the dance to the employees, or that the respondent took any disciplinary action against the employees who organized the dance or caused the damage to the respondent's property, or complained to them about it.

Throughout the period from the termination of the strike to the date of the hearing herein, the respondent by its supervisory force consistently urged, persuaded, and warned its employees against membership in the Union. Much of the testimony of employees concerning statements revealing the respondent's interference with and

restraint and coercion of their rights under the Act is undisputed in the record. Some instances of such undenied statements follow:

Two days after the strike, Paight, the assistant superintendent of the lacquer department, came into the freight room and said to Joseph Evanusich and other employees of his department, "Well,—well, I can't—I am nervous to look at you boys. I think I am going to fire you, one by one. I got eight on a list I am going to get rid of." This statement, while not clear in itself, was construed by the employees as a threat of discharge because of their union activities. Paight, when called as a witness, failed either to deny or explain the statement. Since the record shows but one interpretation of the statement, that of the employees, and since that interpretation is consistent with the contemporaneous anti-union activities of the respondent, we find that the statement was made for the purpose of threatening those engaging in the union activities in the plant with discharge because of such activities.

On the day following the strike Stephen Mirsir, an employee, was seen by Paight talking to Frank Rehoric, president of the Union. Although their conversation was regarding some pails used in their work Paight immediately told them not to talk about the Union any more. Felix Di Prisco, speaking to Mirsir in the presence of 10 or 15 other employees, also said in substance that, "The C. I. O. no good. We don't join the C. I. O."

Joseph Doran, Sr., was told by his foreman, "I am ashamed of you. I hear you are getting applications for the Union . . . Let us forget about the Union."

Foreman Johnson asked one of the employees after the election, "Do you think we will have any more work if the C. I. O. got in here?" and told him that "they had an election in New Jersey, and the plant lost out, so the employer gave up the plant."

An employee named Szczekowski was congratulated by his foreman because of his participation in the parade during the election celebration heretofore described.

From the foregoing, it is clear that from the moment that the Union began to organize the employees of the Zapon Division, it was the respondent's purpose to destroy the Union in the plant. The evidence revealing the respondent's interference with the shopgate meetings is undisputed. The presence of the respondent's foremen and other supervisory officials at the meetings was in itself sufficient to deter the employees from attending them and the conduct of the respondent's supervisory officials in heckling and ridiculing the union organizer clearly revealed the respondent's hostile attitude toward the Union to the employees. The presence of the respondent's stenographer, keeping a record of all proceedings at the meetings, further furnished to the employees a cogent expres-

sion of the respondent's disapproval. When the meetings in the Union hall began, union members made numerous complaints that they were afraid to attend the shop-gate meetings because of the presence of the foremen and the supervisors.

The respondent offered no testimony to explain its conduct in closing the window in the rubber department over the protests of the employees. It is apparent from the undisputed evidence that the window was closed by the respondent's watchman upon orders from the "office"; that the window had been open during both summer and winter prior to the shop-gate meetings; and that the closing of the window resulted in a lack of ventilation. It is further apparent from the respondent's failure to offer any evidence to explain the closing of the window under the circumstances heretofore set forth, that the window was closed under the respondent's direction to prevent employees within the plant from listening to the union organizer, and we so find.

The increased burden of work placed upon the lacquer-department employees and the constant surveillance over them after they became active in union affairs reveals the respondent's opposition to the Union from its inception. The explanation given by Paight, assistant superintendent of the department, for his demanding better work of and exercising closer supervision over the lacquer-department employees is inconsistent with that given by Creighton, the general manager. Paight testified that he concluded that the employees were not doing their work properly because the laboratory workers who had taken their places during the strike had turned in a superior grade of work. Creighton testified, however: "We weren't satisfied with the performance of any of the men in that department over . . . the last two or three months prior to the strike." This dissatisfaction with the work of the lacquer-department employees, claimed to have existed for 2 or 3 months prior to the strike, was acted upon, however, only after the employees in the department had affiliated with and become active in the Union. The apparent cessation of such dissatisfaction immediately following the election which resulted in the defeat of the Union clearly reveals that the respondent, in requiring of its employees more work than usual and in keeping them under surveillance, sought thereby to discourage union activities. That this purpose of the respondent was accomplished is clear.

No evidence was introduced by the respondent contradicting the testimony of Joseph Doran, Jr., concerning the respondent's discriminatory acts against him in connection with his employment, nor was Doran cross-examined by the respondent as to such conduct. In the absence of any explanation as to the discriminatory conduct by the respondent, we find that the respondent discriminated with



reference to Doran's hire and tenure and the terms and conditions of his employment with a view to discouraging membership and activity in the Union and that the respondent thereby did discourage membership and activity in the Union.<sup>4</sup>

The combination of events occurring during the election celebration of December 8, 1937, and the participation of the respondent's supervisory force and foremen therein clearly reveal the anti-union animus of the respondent. The parade immediately following the election was led by the respondent's foreman, Felix Di Prisco, who actively participated in the entire celebration. Di Prisco was not called as a witness to explain his conduct in this or any other respect. Company property was used for signs and noise making and intoxicating liquor was dispensed to employees by a foreman. Various supervisory officials, including the plant manager, made speeches at the celebration, thereby indicating to the employees in unmistakable terms the respondent's approval of the Union's defeat in the election. The respondent's acquiescence in the use of its premises for a dance on the night of the election and its failure to take any action regarding the property damage which occurred there serve as further indication of the lengths to which the respondent went to demonstrate to its employees its preference for lack of employee organization to the Union. We find that the respondent assisted, supported, and encouraged the anti-union demonstrations of December 8.

The foregoing activities of the respondent, indicating its hostile attitude toward the Union, engendered among the respondent's employees the fear of reprisals for union activities. This fear pervaded the plant from the time of the start of union organization therein through the time of the hearing. The foundations of such fears lay in statements such as that by Foreman Felix Di Prisco who told a union member during the hearing, "You guys should all be fired . . . and you are going to get kicked out pretty soon." Di Prisco then verbally attacked in a vicious and obscene manner the Board and the mayor of Stamford for his sympathy with the Union.

The effect of the respondent's anti-union practices, described above, on the Union's membership is evident. In October 1937 the Union claimed a membership of 182 employees and offered to allow the respondent to examine its membership cards. At the election of December 8, 1937, it obtained only 96 votes. Thereafter, following the speech of the general manager that "it was all over now" and that he "was glad they liked" the way the election had resulted, and the respondent's continued anti-union activities, the Union's membership

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<sup>4</sup> No charge of a violation of Section 8 (3) of the Act was filed with reference to Joseph Doran, Jr., and apparently no claim for reinstatement or back pay was made as to him.

dwindled until, as Fred Ruscoe, the organizer, described it at the hearing, "there is practically no union there."

We find that by the acts described above the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

*B. The alleged discriminatory discharges*

The complaint, as amended, alleged that the respondent had discharged John Martinech and Klym Markevich because of their activities in the Union, thereby discriminating with reference to their hire and tenure of employment.

*John Martinech* was discharged by the respondent on September 10, 1937. Prior thereto he had been employed for approximately 1½ months in the plant laboratory and for 3 months as a mixer in the lacquer department. There his work consisted of mixing the principal ingredients for batches of lacquer.

Martinech was active in the strike of August 23 to 26, 1937, and acted, at times, as a volunteer organizer for the Union. On September 9, 1937, he was elected secretary of the Union. On the following day, he was discharged. The reason for the discharge asserted by the respondent at the time thereof and since was that Martinech had improperly prepared two batches of lacquer, both mistakes having become apparent immediately prior to his discharge. The mistakes in both cases were characterized by witnesses as gross and as involving unusual carelessness. A 4-day delay in the shipment of one batch of lacquer resulted from Martinech's error. Martinech's work generally was not as good as that of other employees in his department, and he had previously been warned by Paight concerning his work.

The reasons presented by the respondent for the discharge of Martinech are not the most persuasive. However, the record does not establish that Martinech's union membership or activities were the cause of the discharge. While the circumstances surrounding it are somewhat suspicious we do not find convincing evidence in the record that the respondent discriminated in regard to the hire or tenure of employment of Martinech to discourage membership in the Union or in any labor organization.

*Klym Markevich* was first employed at the plant in 1918 and, except for 9 months, worked continuously for the respondent from that time until November 1, 1937, when he and 54 others were laid off. From 1930 to 1937 Markevich was employed in the rubberized-cloth department in the plant.

In January 1937 Markevich was a member of a committee of employees which asked the respondent for an increase in pay. After considerable negotiation with the management, the employees re-

ceived the increase. Markevich was a member of the Union and was vigorous and outspoken in his activities as a volunteer organizer. His affiliation with and his diligence on behalf of the Union were known to the management.

The lay-off of November 1, 1937, was due to a diminution of the respondent's business. Markevich was one of 9 of the 14 employees laid off in the rubberized-cloth department where he was employed. Markevich claims that the respondent discriminated against him in reinstating, within the 5-month period following the lay-off, three employees in his department who were junior to him in point of service, while not offering employment to him. The respondent submitted evidence showing that the three employees reinstated could perform a number of specialized jobs which Markevich was unable to do. The respondent conceded that Markevich's work was entirely satisfactory and stated at the hearing that it intended rehiring him as soon as it could use him. The good faith of the respondent as to this intention is indicated by a stipulation entered into by counsel for the respondent and the Board and filed herein subsequent to the hearing showing that the respondent rehired Markevich on July 20, 1938.

We find that the respondent did not discriminate with reference to the hire and tenure of employment of Klym Markevich to discourage membership in the Union or in any labor organization.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III, A above, occurring in connection with the operations of the respondent, described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom. We shall also order the respondent to take certain affirmative action which we find is necessary to effectuate the policies of the Act.

Having found that the respondent has not discriminated with regard to the hire and tenure of employment of John Martinech and Klym Markevich, we shall dismiss the complaint in so far as it alleges the commission of unfair labor practices within the meaning of Section 8 (3) of the Act.

Upon the basis of the above findings of fact, and upon the entire record in the case, the Board makes the following:

## CONCLUSIONS OF LAW

1. District No. 50, United Mine Workers of America, Local No. 12083, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

4. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

## ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Atlas Powder Company, Stamford, Connecticut, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Immediately post notices in conspicuous places throughout the plant of the Zapon Division, and maintain such notices for a period of at least sixty (60) consecutive days, stating that the respondent will cease and desist in the manner set forth in paragraph 1 of this Order;

(b) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint, in so far as it alleges that the respondent has engaged in unfair labor practices within the meaning of Section 8 (3) of the Act; be, and it hereby is, dismissed.

MR. WILLIAM M. LEISERSON took no part in the consideration of the above Decision and Order.